
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the matter of

Implementation of the Non-Accounting
Safeguards of Sections 271 and 272 of the
Communications Act of 1934, as amended.

CC Docket No. 96-149

COMMENTS OF AMERITECH

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COMMENTS OF AMERITECH

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SUMMARY

Although Ameritech largely supports many of the tentative conclusions reached in the NPRM, Ameritech also believes that some proposals should be modified. In designing reporting requirements, the Commission must balance three interrelated considerations: usefulness, protection against disclosure of proprietary information, and minimizing the burden on the BOC. The measures proposed in the NPRM for most service categories would, if adopted, require significant implementation effort but provide little, if any, critical information.

In particular, service categories 1 and 3 in the Commission's proposal should not be adopted. Category 1 in the proposal would measure completion of installation according to the customer's desired due date. Category 3 in the proposal would measure completion of the Firm Order Confirmation, or due date, negotiation. For each of these categories, the BOC does not control successful completion. Also, while only results for the affiliate would be reported under the proposal, the usefulness of these two service categories for purposes of detecting systemic discrimination in favor of the affiliate is suspect, because results for non-affiliates for these service categories are vulnerable to

manipulation by competitors. These service categories would soon become measures not of the BOC's performance, but of the due date and negotiating strategies of each interexchange carrier customer. Average interval information is a more accurate measure of BOC performance as defined in Section 272(e)(1), and is more useful to non-affiliated IXC's.

Also, disaggregation levels for some other service categories should be revised. Finally, Ameritech feels that updating should be required no more frequently than quarterly, as is done for ONA.

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COMMENTS OF AMERITECH

I. Introduction

In its Order implementing the non-accounting safeguards of the Telecommunications Act of 1996,¹ the Commission has taken up the issue of the requirements of Section 272 (e)(1) of the Act² and has

¹ *In re* Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rule-making, FCC 96-489, released Dec. 24, 1996 [hereinafter "Non-Accounting Safeguards Order"].

² Section 272(e)(1) provides as follows:

FULFILLMENT OF CERTAIN REQUESTS — A Bell operating company and an affiliate that is subject to the requirements of section 251(c) —

(1) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates. . . .

concluded that specific public disclosure requirements are necessary to implement that section effectively.³ Accordingly, the Commission included within the Order a Further Notice of Proposed Rulemaking⁴ on the particular subject of Bell Operating Company reporting requirements. Ameritech⁵ hereby responds to that Further Notice.

II. The Commission Has Appropriately Limited the Scope of Reporting Requirements to Service Intervals for Access Services Provided to the Affiliate.

In the Further Notice, the Commission tentatively concludes, notwithstanding the contrary proposals of Teleport Communications Group, Inc. ("Teleport"), that the proper scope of the proposals considered in this docket is limited to requirements necessary to implement the exchange access service interval requirements of Section 272(e)(1). The Further Notice correctly notes that much of Teleport's proposal is directed toward implementation of local competition by incumbent LECs, and therefore does not address

³ Non-Accounting Safeguards Order at ¶¶ 239-245.

⁴ Non-Accounting Safeguards Order at ¶¶ 362-389 [hereinafter "Further Notice"].

⁵ Ameritech comprises Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and various affiliates.

service intervals provided by the BOCs to IXC's. The Further Notice also observes that Teleport has raised many of these same proposals in its Petition for Reconsideration in the interconnection proceedings, CC Docket No. 96-98,⁶ and then asks whether the proposed reporting format is sufficient to implement the service interval requirements of section 272(e)(1).

Ameritech submits that it is appropriate to limit the scope of reporting requirements in this proceeding to access services provided by the BOC to its Section 272 affiliate. Ameritech also agrees with the Further Notice that nondiscriminatory provision of telephone exchange service is more appropriately addressed in the context of the interconnection proceeding. In addition, it is appropriate to limit the scope of the proposed requirements to the reporting of service intervals provided by the BOC to its Section 272 affiliate. The Further Notice recognizes that the types of information it proposes to require to be tracked for the Section 272 affiliate can be gathered by non-affiliates for their own operations. Thus, a requirement to produce comparative reports showing intervals for affiliates versus non-affiliates would go

⁶ Further Notice at ¶ 382 n.982.

beyond the requirements of Section 272(e)(1). In addition, such a requirement would violate the intent of the 1996 Act by placing unnecessary additional regulatory burdens on the BOC.

III. The Proposed Process for Certification and Making Available Service Interval Information Is Reasonable.

A. The Proposed Certification Process Should Be Adopted.

In the Further Notice (§ 368), the Commission proposes that a BOC, upon receiving 271 interLATA authorization (and annually thereafter), must submit a signed affidavit stating that (1) the BOC will maintain the required information in a standardized format; (2) the information will be updated in compliance with the rules; (3) the information is maintained accurately; and (4) how the public will be able to access the information. The Commission also proposes that if the BOC makes any material change in the manner in which the information is made available to the public, it must submit an updated affidavit within thirty days after the change.

In Ameritech's view, the Commission's annual affidavit proposal appears reasonable in terms of conserving Commission resources and should be adopted.

*B. Availability on the Internet is a Reasonable Means
To Make the Information Available.*

One alternative suggested by the Commission is for the BOC to make the information available to the public in at least one of their business offices during regular business hours, and include information as to the business office location in the BOC's affidavit. The Commission also asks whether the required information also be available electronically (e.g., on the Internet or through another electronic mechanism).

Ameritech would be willing to place on the Internet whatever information is finally deemed necessary, in order to make it accessible by all interested parties. Placement on the Internet would facilitate access to and use of the information by unaffiliated entities, including unaffiliated small entities. However, the Commission should be mindful of the fact that initial placement and periodic updates require design efforts. Thus, after the Commission makes a final decision on format and content, sufficient lead time — at least 90 days — should be allowed to allow for design and placement of the information.

IV. Any Information Collection and Reporting Requirements Adopted Must Balance Three Important and Interrelated Considerations: Usefulness, Protection, and Burden.

In designing reporting requirements, the Commission must balance three interrelated considerations in order to meet its obligations under the 1996 Act. The first of these is usefulness: the reporting requirements must be designed to capture information which is relevant and useful in determining a BOC's compliance with the non-discrimination requirements of Section 272(e)(1). Unless the objectives of section 272(e)(1) are clearly served by the collection and reporting of a service category, the Commission should exclude that category from its requirements. As described below, the usefulness of certain of the proposed service categories is unclear, and they should therefore be excluded from any final requirement.

The second consideration is protection: the reporting requirements must be designed to protect against disclosure of proprietary information to the interLATA affiliate's competitors. The Commission's proposal, which uses percentages and averages and does not require disclosure of the absolute number of BOC affiliate requests, appears to protect adequately the competitive interests of BOC affiliates. The alternative reporting requirements proposed by others, which would require disclosure of the number of orders placed or

circuits ordered by the BOC affiliate, would not afford adequate protection to the BOC affiliate.

The third consideration is burden: the reporting requirements should be designed to minimize the burden on the BOC. It should be noted at the outset that any regulatory requirement to provide information which is not relevant to the stated goal of monitoring compliance with nondiscrimination requirements is burdensome, regardless of how much or how little BOC resources are required to provide the information.

The Further Notice makes an erroneous judgment that maintaining information in the proposed format will not impose a significant additional burden on the BOCs. The Commission bases this statement on two faulty assumptions. First, it assumes that BOCs are likely to maintain information regarding the service they provide to their affiliates and to unaffiliated entities in the proposed format in order to address potential complaints. Second, it notes that under existing price cap rules, the BOCs must track service intervals for end-users as part of their service quality reporting requirements, and assumes that tracking such intervals for services provided to interLATA affiliates in the proposed format would require little incremental effort.

These assumptions are faulty because the information proposed to be collected and maintained is currently not tracked in the proposed form, nor would it likely be done in this form absent a specific requirement to do so. The necessity of tracking information at the proposed level of detail to show compliance with Section 272's nondiscrimination requirements is not evident. It has not been necessary in the context of ONA reporting to track performance in discrete increments beyond the point where an installation or repair commitment is missed, nor should it be necessary in the instant context. Reporting on average intervals provides an equally effective check on systemic discrimination without the administrative burden of the Commission's proposal.

V. Certain Revisions to the Proposed Information Reporting Requirements Will Allow the Commission To Balance These Considerations While Implementing the Nondiscrimination Provisions of Section 272(e)(1).

While the annual affidavit portion of the Commission's proposal appears to strike a reasonable balance between assurance of nondiscrimination and BOC burden, the Commission's proposal for information collection and reporting includes some service categories whose usefulness in terms of ensuring compliance with nondiscrimination requirements is unclear. In addition, the measures proposed in the

NPRM for most service categories would, if adopted, require significant implementation effort but provide little, if any, critical information.

Ameritech describes its concerns about the reporting proposal below, and provides revisions which will better balance the usefulness of the information collected with protection of competitively sensitive data while minimizing the burden on BOCs.

A. Service Categories 1 and 3 in the Commission's Proposal Should Not Be Adopted.

While the proposal contained in the Further Notice appears to be generally reasonable, some revisions are warranted to strike an appropriate balance of usefulness, protection, and burden. For example, two of the service categories contained in the proposal outlined in the Further Notice are of uncertain value relative to ensuring compliance with Section 272(e)(1)'s nondiscrimination requirements. One of these categories, item 1 in the proposal, measures completion of installation according to the customer's desired due date. The second category, item 3 in the proposal, measures completion of the Firm Order Confirmation, or due date, negotiation. The usefulness of these two service categories is doubtful for a number of reasons.

First, for each of these categories, the BOC does not control successful completion. In the case of the first service category, as the

Further Notice itself observes, the BOC has no control over the customer's desired due date. Similarly, the power to complete negotiations for a Firm Order Confirmation (*i.e.*, due date) is shared equally by the BOC and the customer.

Second, while only results for the affiliate would be reported under the proposal, the usefulness of these two service categories for purposes of detecting systemic discrimination in favor of the affiliate through comparisons with results for non-affiliates is suspect. Results for non-affiliates for these service categories are vulnerable to manipulation by competitors, either through direct conscious effort or as a result of operating practices. In the first case, a rival could make it a practice to always indicate a desired due date that the BOC cannot possibly meet, resulting in poor performance by the BOC for the non-affiliate regardless of its performance for its affiliate. In the second case, a rival could undertake to negotiate in a manner that delays agreement on a due date.

Either of these cases may arise as part of a strategic policy aimed at the BOC affiliate, or due to internal practices and policies of the non-affiliate. Sales compensation plans are an example. To the extent that such plans tie commissions to the installation date or early

completion, an incentive is created to request unreasonable dates or “stonewall” for the desired due date.

In either event, an apparent disparity of treatment may result. In effect, these service categories become measures not of the BOC's performance, but potentially of the reasonableness of each inter-exchange carrier customer in terms of their due date and negotiating strategies. Average interval information is a more reasonable measure of BOC nondiscrimination, and is more useful to non-affiliated IXC's.

Finally, it is not clear how tracking of this information will advance the stated goal of ensuring that a BOC provides services to affiliates on intervals no more favorable than those provided to non-affiliates.

Because of these flaws—the unclear benefit of measuring a BOC on parameters outside its control, and potential for gaming by rivals—the proposed items which measure BOC performance against the customer's desired due date and relative negotiation periods should be dropped from any final reporting requirement.

B. Information on Average Intervals Provided to the BOC's Affiliate Is Sufficient for Competitors To Detect Discriminatory Treatment; Tracking and Reporting Which Measures by Successive Time Periods is Not Necessary to Ensure Compliance.

The Further Notice proposes that a number of service categories be measured in terms of the percentage of circuits completed in successive time periods. This information requirement is apparently based on speculation that the BOC, when it misses an installation or repair commitment, will routinely miss by a greater interval its commitments for non-affiliates than for its affiliate. The rationale is that the amount of delay in installing a circuit, and not just whether a due date was missed, may be a significant source of difficulty to a customer. Ameritech feels that reporting of average intervals is a more appropriate way to provide monitoring compliance with 272(e)(1) than the proposed successive period reporting, for a number of reasons.

First, if systemic discrimination by a BOC in favor of its affiliate were indeed to occur, the effects would readily appear in average interval information. AT&T claims that average intervals should not be used, because averages allow a BOC to "hide" its disparate service levels by blending superior provisioning intervals for affiliates with inferior intervals provided to non-affiliates. However, under the Commission's proposal, the information to be provided relates specifi-

cally to services provided by the BOC to its affiliate; it does not provide comparisons to non-affiliate services. As such, reporting average intervals does not allow a BOC to “hide” disparate levels of service.

Second, the value of reporting the required information in the proposed format in detecting willful, systemic discrimination is suspect because it fails to recognize the potential for significant differences in general characteristics of orders placed by the BOC affiliate as compared to other, more established IXC's (*e.g.*, more circuits placed between the same two points on a single order). Also, differences in geographic areas of focus may skew comparative results. For example, to the extent that an existing carrier focuses expansion in areas where demand historically would not support placement of additional BOC facilities, the non-affiliate's expansion could create a short-term strain on available facilities, resulting in longer intervals for the non-affiliate.

Another concern raised by commenters was that the BOC may routinely delay high-priority orders of non-affiliates and expedite their low-priority orders, while doing the reverse for affiliates. This concern rests on the assumption that the BOC will know not only the priorities of its affiliate's orders, but also the priorities of orders placed by non-affiliates. This assumption attributes an unreasonably high ability by

the BOC to determine relative priorities of all the orders each customer places.

The Further Notice also asks whether BOCs should be required to disclose the due date or length of interval promised to affiliates. If an average interval is reported, there is no need to report the interval the BOC promises to its affiliate; it will be evident in the average interval and "percent met" information disclosed.

C. Disaggregation Levels for Some Other Service Categories Should Be Revised.

With the exception of items 1 and 3 in the proposal, the service categories and measures proposed appear generally reasonable in terms of the service granularity required. However, the Commission should consider whether some of the subcategories will truly be useful to detect systemic discrimination, and should avoid inclusion of disaggregations based on sheer speculation that a BOC and its interLATA affiliate might conspire in complex schemes in order to mask discrimination.

For example, the Further Notice asks whether BOCs should provide the information required in service categories 4 and 6 by carrier identification code (CIC). While this can be done, Ameritech questions the value of this requirement. Provision of PIC-related information by

CIC presumes that, for an affiliate with multiple CICs, service provided to one CIC might be superior to that provided to another CIC. This in turn presumes that the BOC would know which CIC should be accorded preferential treatment. Further, the proposed by-CIC reporting requirement presumes that the difference in service intervals between the CICs would be minimal, because the effects of any major preference in service intervals to one CIC would be a lower result at an aggregate level. In addition, the affiliate's rivals are able to compare the results for each of their own CICs; a substantial difference in treatment of one CIC versus another for an individual non-affiliate would probably trigger a claim of discrimination, irrespective of performance results for the BOC's affiliate.

The Further Notice also asks whether BOCs should provide the information required by service category 7 in two subcategories: DS1 Non-Channelized and DS0. Again, it appears that this proposal is grounded in speculative concerns about complex discrimination schemes. For the same reasons given above, it is not clear what purpose is served by such disaggregation.

The Further Notice asks whether information in all other service categories should be broken down into three subcategories: DS3, DS1, and DS0. Ameritech feels that this level of disaggregation is reason-

able. However, the value of disaggregating the DS0 subcategory further into DS0 Voice Grade and DS0 Digital, as suggested by AT&T, is unclear and appears to be based on a speculative concern about the potential for complex discrimination schemes.

The Further Notice asks whether BOCs should aggregate their own requests with requests of all of their affiliates for each service category, or should they maintain data for each affiliate and themselves separately. Again, there is no reason to require BOCs to maintain data for each affiliate and themselves separately. The purported concern here is that aggregation allows the BOC to “hide” disparate levels of service. However, aggregating BOC and affiliate services hides nothing, because a BOC would not allow its core business to suffer inferior service in order to advantage its interLATA affiliate—it wouldn’t make sense.

The Further Notice asks whether BOCs should maintain separate data for each state in their service regions, or whether a different level of corporate aggregation is more appropriate. Maintaining data for each state seems to be an appropriate level of disaggregation, since this matches the level at which interLATA authorization is granted. This level of disaggregation also matches the lowest level of aggregation for ARMIS and ONA reporting.

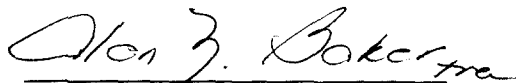
The Further Notice also seeks comment on how often the BOCs should be required to update the data that they must maintain, and how long underlying data should be retained. Ameritech feels that updating should be required no more frequently than quarterly, as is done for ONA. In addition, the current two-year retention period for ONA data seems reasonable in this context.

VI. The Commission's Proposed Categories and Measures, Revised As Described Above, Strike a Reasonable Balance of Usefulness, Protection, and Minimization of Burden

The revisions described above will provide non-affiliates and the Commission with sufficient information to monitor compliance with the nondiscrimination requirements of section 272(e)(1) in the provision of exchange access services to BOC affiliates and unaffiliated entities. In addition, the proposed revisions safeguard volume and

timing information which, if disclosed to rivals, could do competitive harm to the BOC affiliate. By limiting the scope and disaggregation level of the information requirements, the burden on BOCs is also kept to the minimum necessary.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 1997, the foregoing
Comments of Ameritech were served by depositing copies thereof in the U.S. Mail at
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